

UNITED STATES BANKRUPTCY COURT

FOR THE

EASTERN DISTRICT OF VIRGINIA  
Alexandria Division

In the Matter of:

JOHN MICHAEL CERCEO II

Debtor

Chapter 13

Case No. 16-11381-BFK

**OBJECTION TO CONFIRMATION OF PLAN,**  
**NOTICE OF OBJECTION TO CONFIRMATION OF PLAN**  
**AND**  
**NOTICE OF SCHEDULED HEARING ON THIS OBJECTION**

Thomas P. Gorman, Chapter 13 Trustee, has filed this objection to confirmation of your Chapter 13 Plan filed May 3, 2016. The cause for this objection is as follows:

**Violation of 11 U.S.C. §1325(a)(9) – Failure to File Required Income Tax Returns**

Debtor has not provided Trustee with copies of his filed state income tax returns despite the fact that Debtor's prior Chapter 13 case 15-11084-BFK was specifically dismissed due to Debtor's failure to file income tax returns.

**Violation of 11 U.S.C. §1325(a)(6) – Feasibility & 11 U.S.C. §1325(a)(3) – Good Faith**

This is Debtor's 6th Chapter 13 case.<sup>1</sup> All of Debtor's prior Chapter 13 cases were either dismissed due to Debtor's failure to make Plan payments or his failure to comply with his basic obligations as a Chapter 13 debtor.

In Debtor's present case, Debtor's proposed Plan does not provide a 60 month Plan payment schedule (Section 1 states "Variable Amt" per month, and total Plan funding to be paid to Trustee as "TBD Motion Resolut [sic]"), nor does the proposed Plan provide for the \$211,895.60 of pre-petition mortgage arrearages owed to Deutsche Bank according to the lender's filed Objection to Confirmation. Section 1 of the Plan only proposes nominal payments of \$50.00/mo. for 3 months, then \$500.00/mo. for 3 months, then \$1,000.00/mo.

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<sup>1</sup> Chapter 13 case 07-13018-SSM filed 10/17/07, dismissed 9/24/10 due to failure to file tax returns and Debtor's material default on Plan payments; Chapter 13 case 10-18031-RGM filed 9/23/10, dismissed 2/14/11 due to Debtor's material default; Chapter 13 case 11-11025-RGM filed 2/14/11, dismissed 6/14/13 due to Debtor's material default; Chapter 13 case 13-14773-BFK filed 10/22/13, dismissed 11/25/13 due to Debtor's failure to file Plan and Schedules; Chapter 13 case 15-11084-BFK filed 3/31/15, dismissed 6/12/15 due to Debtor's failure to file tax returns and lack of good faith.

**Notice of Objection To Confirmation**

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for 6 months, with the “Balance TBD.” Meanwhile, Debtor’s Schedule J shows that he is not making his regular post-petition mortgage payments.

However, Trustee notes that Debtor’s monthly gross income of \$4,200.00/mo. is insufficient to fund a Chapter 13 Plan that cures the \$211,895.60 of mortgage arrearages while maintaining Debtor’s regular living expenses that include his on-going monthly mortgage payments.

It appears from Section 11 of the Plan that the purpose of Debtor’s Chapter 13 filing is to provide him a forum to litigate the validity of his mortgage lien on his residence, which is not a proper purpose for a Chapter 13 case.

**Your rights may be affected. You should read these papers carefully and discuss them with your attorney, if you have one in this bankruptcy case. (If you do not have an attorney, you may wish to consult one.)**

If you do not wish the court to grant the relief sought in the objection, or if you want the court to consider your views on the objection, then on or before five business days prior to the hearing date, you or your attorney must:

File with the court a written response with supporting memorandum as required by Local Bankruptcy Rule 9013-1(H). Unless a written response and supporting memorandum are filed and served by the date specified, the Court may deem any opposition waived, treat the motion as conceded, and issue an order granting the requested relief without further notice or hearing. If you mail your response to the court for filing, you must mail it early enough so the court will receive it on or before the date stated above. You must mail a copy to the persons listed below.

***Attend the hearing to be held on July 14, 2016 at 1:30 p.m. in Courtroom #3 on the 3<sup>rd</sup> floor, United States Bankruptcy Court, 200 South Washington Street, Alexandria, Virginia 22314.*** If no timely response has been filed opposing the relief requested, the court may grant the relief without holding a hearing.

A copy of any written response must be mailed to the following persons:

Thomas P. Gorman  
300 North Washington Street, Ste, 400  
Alexandria, VA 22314

Clerk of the Court  
United States Bankruptcy Court  
200 South Washington Street  
Alexandria, VA 22314

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If you or your attorney do not take steps, the court may decide that you do not oppose the relief sought in the motion or objection and may enter an order granting that relief.

Date: June 24, 2016

/s/ Thomas P. Gorman

Thomas P. Gorman  
Chapter 13 Trustee  
300 N. Washington Street, #400  
Alexandria, VA 22314  
(703) 836-2226  
VSB 26421

**CERTIFICATE OF SERVICE**

I hereby certify that I have this 24th day of June, 2016, served via ECF authorized users or mailed a true copy of the foregoing Objection to Confirmation, Notice of Objection and Notice of Hearing to the following parties.

John Michael Cerceo II  
Chapter 13 Debtor  
P.O. Box 3364  
Sterling, VA 20164

/s/ Thomas P. Gorman  
Thomas P. Gorman